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Nos. 72, 87, 290, 291.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

J. D. SHELLEY, Et Al., Petitioners,
vs.
LOUIS KRAEMER, Et Al.

ORSEL McGEE, Et Al., Petitioners,
vs.
BENJAMIN J. SIPES, Et Al.

JAMES M. HURD, Et Al., Petitioners,
vs.
FREDERICK E. HODGE, Et Al.

RAPHAEL G. URCIOLO, Et Al., Petitioners,
vs.
FREDERICK E. HODGE, Et Al.

On Writs of Certiorari to the Supreme Courts of Missouri and Michigan and the United States Court of Appeals for the District of Columbia.

MOTION FOR LEAVE TO FILE AND BRIEF FOR THE NATIONAL BAR ASSOCIATION AS AMICUS CURIAE.

EARL B. DICKERSON,
President, National Bar Association.
RICHARD E. WESTBROOKS,
Chairman, National Committee on Civil Rights and Liberties.
LORING B. MOORE, and
GEORGE N. LEIGHTON,
Counsel for Amicus Curiae.

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ORSEL McGEE, Et Al., Petitioners,

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On Writ of Certiorari to the Supreme Court of the State of Michigan.

No. 290.

JAMES M. HURD, Et Al., Petitioners,

vs.

FREDERICK E. HODGE, Et Al.

No. 291.

RAPHAEL G. URCIOLO, Et Al., Petitioners,

vs.

FREDERICK E. HODGE, Et Al.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

MOTION OF THE NATIONAL BAR ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The National Bar Association respectfully prays leave to file a brief as *amicus curiae* in the above captioned cases. The applicant has filed with the clerk the written consent of counsel for petitioners in said cases and has in

writing requested the consent of counsel for respondents in each of said cases. No reply has, as yet, been received from counsel for respondents.

The National Bar Association is a membership organization composed of members of the Bar who are citizens of the United States, and is non-discriminatory in its membership as to race, color, creed or national origin. It was organized in the year 1925 for the purpose of "Advancing the science of jurisprudence; upholding the honor of the legal profession; to promote social intercourse among members of the Bar and to protect the civil and political rights of all citizens of the several states of the United States."

Each of these cases presents an issue which affects the civil and political rights of citizens of the United States. Here, judicial decisions of Courts of the States of Missouri, Michigan, and the District of Columbia give force, by State action, to the schematic segregation of citizens on the basis of race or color. This Court is asked to decide whether enforcement by the State Courts and the United States Courts for the District of Columbia of racial restrictive covenants violates the prohibitions of the Fourteenth Amendment to the Constitution, and enforces as a matter of State law restrictions against ownership and occupancy of land under guise of enforcement of mere private agreements between individuals. It is the view of the National Bar Association, as set forth in the written argument hereinafter, that the enforcement of such restrictions in the instant cases would be in effect to operate on behalf of the States and District of Columbia laws destructive of the civil rights of a large segment of the population of these States and the District of Columbia in violation of the prohibitions of the Fifth and Four-

teenth Amendments to the Constitution of the United States and the Federal Civil Rights Statutes, and would likewise enforce a public policy inconsistent with the established public policy of these States and of the United States as shown by their Constitutions, Statutes and Judicial Decisions.

EARL B. DICKERSON,
President, National Bar Association.
RICHARD E. WESTBROOKS,
Chairman, National Committee on
Civil Rights and Liberties.
LORING B. MOORE, and
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BRIEF FOR THE NATIONAL BAR ASSOCIATION AS AMICUS CURIAE.

Opinions Below.

The opinion of the Supreme Court of the State of Missouri No. 72 (Rec. 153-159), is reported at 198 S. W. 2d 679. The opinion of the Supreme Court of the State

of Michigan No. 87 (Rec. 60-69), is reported at 316 Mich., 614. The opinion of the United States Court of Appeals for the District of Columbia in Nos. 290 and 291 (Rec. 417-432), is reported in 162 F. 2d, 233.

Jurisdiction.

The jurisdiction of this Court is invoked under Sections 237 and 240 of the Judicial Code, 28 U. S. C. 344(b) and 347(a)).

Questions Presented.

Questions presented and argued in this brief pertain to the application of the Fourteenth and Fifth Amendments to judicial enforcement by the courts of States and of the District of Columbia of race restrictions. The questions presented and argued deal with the acts of courts in declaring null and void contracts and deeds of conveyance and the granting of specific performance of covenants by canceling and setting aside contracts and deeds of conveyance and enjoining violations, and especially where contract purchasers and grantees are not direct parties to the restrictive covenants, and where they are members of the class excluded by the restrictions.

Statement.

Facts in connection with the cases are set forth in Briefs of the Petitioners. As especially pertinent to this Brief, we add the following:

Nos. 290 and 291—The opinion of the Court quotes from *Hundley* v. *Gorewitz*, 132 F. 2d 23, 24, as follows:

> "In view of the consistent adjudications in similar cases, it must now be conceded that the settled law in this jurisdiction is that such covenants as this are valid and enforceable in equity by way of injunction."

The Court further says:

"Similarly, restrictive covenants expressed in agreements between the owners of land have been upheld by this Court in the following cases" (citing cases): The Court affirmed a decree declaring "null and void these four deeds to the Negro purchasers, ordered them to vacate the land and premises and permanently enjoined the renting, selling, leasing, transferring or conveying the said lots to any Negro or colored person."

No. 87 — The Court in this case, in its opinion, refers to the case of *Parmalee* v. *Morris,* 218 Mich. 625, 188 N. W. 330, and other cases of that state enforcing race restrictions, as a ruling case. The opinion also refers to the case of *Kathan* v. *Stevenson,* 307 Mich. 485, 12 N. W. 2d 332, as a case in which the Court was "urged to apply a racial restriction to the property under a claimed general plan" which it declined to do, but distinguishes as to "private agreements containing racial restrictive covenants." The Court affirmed a decree enjoining the defendants and Petitioners herein from occupying their property.

No. 72 — The Court, in its opinion, enforcing a race restriction agreement entered into in 1911, says as follows:

"Agreements restricting property from being transferred to or occupied by Negroes have been consistently upheld by the Courts of this State as one which the parties have the right to make and which is not contrary to public policy." (Citing cases.)

The Court remands the cause for the granting of relief and providing that "the chancellor may retain jurisdiction of the case for the settlement of any claims between the defendants and others over the purchase of the property which may arise because of the enforcement of the restrictions.

ARGUMENT.

I. The Issues.

The practical issue raised by the questions presented is a social question, namely, Whether the States of the United States and the District of Columbia can declare, make, establish, and enforce ghettos for American citizens because of their race, religion, or color. This is clearly the issue because of the result of State Court enforcement of race restrictions which these cases exhibit. The legal questions arise from the practice of owners of real property, while owners, and under organized programs, impressing titles to real property with discriminatory qualifications restricting future ownership and occupancy on the basis of race, color, or religion. The extent of coverage of race restrictions in large metropolitan cities of Ohio, Michigan, Missouri, Illinois, California and the District of Columbia has been presented in the records and briefs of the Petitioners in these cases.

The legal issues arising under questions presented call for an examination of the nature of the general right to acquire, own, enjoy, and dispose of real property, and for an examination of the nature and extent of governmental limitations upon such rights. Public policy questions as pertain to restrictions as to the kinds of persons who may occupy and own real property, citizens or aliens, Jew, Catholic, or Protestant, or as to race or color, are presented. Such questions are presented notwithstanding the existence of constitutional and legal guarantees to the contrary. Public policy questions are presented as to equal protection of the laws under state public policies

unfavorable to unreasonable restraints on alienation and restrictions on the free use of property. We are concerned also with the modes of legal protection of property rights, legal and equitable, and with State and National safeguards of property and human rights. Interpretation of the Fourteenth and Fifth Amendments to the Constitution, the Federal Civil Rights Acts and the common law rights of the Petitioners, within the several States and the District of Columbia from which they come, to acquire, own, and enjoy real property, is involved.

II.

The enforcements of the contracts in the instant cases deprive the petitioners of the right to acquire, own, enjoy and dispose of real property in violation of the Fourteenth and Fifth Amendments to the Federal Constitution.

A. The general right to acquire, own, enjoy and dispose of real property exists for the petitioners by virtue of their State and National citizenship.

B. As citizens of the United States the right to acquire, own, enjoy and dispose of real property is secured to the petitioners by the Federal Civil Rights Acts (U. S. Rev. Stat. 1977, 1978.)

The due process of law clause of the Fourteenth Amendment, and as contained in the Fifth Amendment, embraces protection of the general rights of citizens. Before the adoption of the Fourteenth Amendment, the courts were called upon to define the privileges and immunities of citizens of the several states. In *Corfield* v. *Coryell*, 4 Washington Circ. Ct. 371, A.D. 1823, the court says:

> "The inquiry is what are the privileges and immunities of citizens of the several states? We feel no hesitation in confining these expressions to those

privileges and immunities which are fundamental; which belong of right to the citizens of the several states which compose this Union from the time of their becoming free, independent and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads; protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

After the adoption of the Fourteenth Amendment, this Court in the case of *Holden v. Hardy*, 169 U. S. 366, uses the following language:

"As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further, and say that as property can only be legally acquired, as between living persons, by contract, a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid."

More recently this Court in the case of *Terrace* v. *Thompson*, 263 U. S. 197, affirmed the existence of such property rights upon the basis of *Buchanan* v. *Warley*, 245 U. S. 60, and the case of *Holden* v. *Hardy*, *supra*. In both cases the court is dealing with legislative acts of states and, in *Terrace* v. *Thompson*, states that:

"If, as claimed, the state act is repugnant to the due process and equal protection clauses of the Four-

teenth Amendment, then its enforcement will deprive the owners of their right to lease their land to Nakatsuka, and deprive him of his right to pursue the occupation of farmer, and the threat to enforce it constitutes a continuing unlawful restriction upon and infringement of the rights of appellants, as to which they have no remedy at law which is as practical, efficient or adequate as the remedy in equity. And assuming, as suggested by the Attorney General, that after the making of the lease the validity of the law might be determined in proceedings to punish the owners, it does not follow that they may not appeal to equity for relief."

In the case of *Buchanan* v. *Warley,* a city ordinance controlling "the occupancy and purchase and sale of property of which occupancy is an incident" was held to be in violation of the Fourteenth Amendment to the Federal Constitution and the Federal Civil Rights Acts. In the case of *Terrace* v. *Thompson,* the court sustained the state act denying to aliens the right to own land within its border as an appropriate exercise of police power. The question in the two cases turns upon the identical question, appropriate exercise of police power by the state, with this distinction, however, that in *Buchanan* v. *Warley, supra,* the right to acquire, own, and enjoy property was held to be a right belonging to a citizen of the state and secured to him by the Federal Civil Rights Acts of which the state could not deprive him, while, in the case of *Terrace* v. *Thompson,* the court notes that an alien does not have a common law right to acquire real property and that the state can deny him such right. It is plain that the principle of decision in both cases is that the state may not deprive a person having such right of the right to acquire, own, and enjoy and dispose of real property.

It is our conclusion that the meaning of these cases is that the state cannot deprive a citizen of the general right to acquire, own, and enjoy and dispose of real property because citizens have such right and cannot deny others, and those who deal with them, of such privilege, except upon a sound practice of exercise of police power in which the equal protection clause of the Fourteenth Amendment would not be violated.

However, the general right to acquire, own, and enjoy and dispose of real property is subject to control by appropriate exercises of police power of the state. The court quotes in *Holden* v. *Hardy, supra*, from *Massachusetts* v. *Alger*, 7 Cush. 84:

> "We think it a settled policy, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified his title, holds it under the implied liability that its use may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth, as well in the interior as that bordering on the tide waters, is derived directly from the government, and held subject to those general regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitation in their enjoyment as will prevent them from being injurious, and to such reasonable restraints and regulations by law as the legislature, under the government and controlling power vested in them by the constitution, may think necessary and expedient."

As indicated in the quotations above the state's power to delimit the right of its citizens to acquire, own, enjoy and dispose of real property functionally belongs to the

legislative branch. In the premises of the instant cases, it cannot be contended that the states have exercised the police power to delimit in any way this general right existing for their citizens, and it is equally obvious that such state legislation as to the Petitioners' rights here claimed would be unconstitutional, as decided in *Buchanan* v. *Warley*, 245 U. S. 60, and other cases. Where the state acting through its appropriate agency. cannot destroy this general right existing in its citizens, certainly it cannot do so through its judicial branch. The Briefs submitted to this Court in the instant cases have demonstrated, by presentation of authorities, that the acts of the judiciary of a state are as much within the prohibitions of the Fourteenth Amendment, as are the legislative acts adopted by the exercise of legislative power. In this sense, it is pertinent to point out here that the language of the Fourteenth Amendment to the Federal Constitution provides that "no state shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States; . . . " The term "any law", as used in the Fourteenth Amendment, includes not only legislative acts but those legal concepts and legal principles which are applied and in some cases conceived by the judiciary. These have been referred to in the language of the legal profession as "judge made law."

In the instant cases the enforcement of the race restrictive covenants involved is not predicated on any legislative enactment of the states in which these covenants were executed. It is conceded that these race restrictive agreements remain purely private compacts so long as they are honored and performed by the parties. These covenants, however, acquire vitality and unconstitutional force when the judicial power of a state is called upon

to enforce them contrary to the will of American citizens who choose, for private reasons, to refuse to conform to their requirements. It is at this point that the race restrictive covenants begin to impinge on the constitutionally guaranteed rights of the Petitioners. Petitioners herein as owners of the real estate subject to the restrictive covenants have, as we have demonstrated, the right under both Federal and State law to acquire, own, enjoy and dispose of real estate. The exercise of the injunctive power by the state courts enforcing these covenants destroys this fundamental right of citizenship.

If respondents contend that the same constitutional safeguards protect them in their right to make racial discriminatory provisions as to occupancy and disposal of properties adjacent to those which they currently own, and if they contend that they have the right also to control future ownership and occupancy of their property, it should be recognized readily that the rights which they assert have been limited by appropriate action of the Congress of the United States through the Federal Civil Rights Acts and by the decision of this Court in the case of *Buchanan* v. *Warley, supra.* The special right which they assert has been effectively controlled and sublimated which as good citizens they should submit to. It should be pointed out that the right to discriminate which they assert parallels the right of a person to sell to an alien in a state where by state law an alien is prohibited from taking title to real property, *Terrace* v. *Thompson, supra.* If the right of a citizen to sell real property to a member so proscribed by state law remains despite the exercise of legislative power, then that right should also remain inviolate despite the execution of a private agreement. In the instant cases the exercise of

state judicial power has gone beyond what this court has held cannot be allowed where there has been the exercise of legislative power, *Terrace* v. *Thompson, supra.*

After the decision of this Court in *Buchanan* v. *Warley,* 245 U. S. 60, and the pointed language in the case of *Corrigan* v. *Buckley,* 271 U. S. 323, it should hardly be expected that state courts would fail to recognize that judicial enforcement of race restrictions is contrary to the public policy of the United States as shown by these decisions, the Federal Civil Rights Acts, and the body of the law dealing with the Fourteenth and Fifth Amendments to the Constitution. The state courts and the appeal courts of the District of Columbia in the very decision under review recognize that the policy of judicial enforcement followed by the courts has produced a system of racial segregation unthinkable from the standpoint of our fundamental law and directly violative of the decision of this Court in the case of *Buchanan* v. *Warley, supra.* The social material set forth in briefs submitted in this cause, and otherwise contained in the records, establish the fact that racial segregation is maintained by judicial enforcement of organized private segregation schemes. The opinions in the instant cases also show that the policy of judicial enforcement adopted by them is violative of the state public policies against racial discrimination. They also show that judicial enforcement in the very cases before the court deny the Petitioners the equal protection of the laws of the respective jurisdictions as pertains to unreasonable restraints on alienation, unreasonable restrictions on the use of property, the right to acquire, own, and enjoy and dispose of real property, and the right to equal protection from the courts of these established state citizen-

ship rights. The courts arbitrarily established classifications of citizens for the enjoyment of real property rights. It is unnecessary to cite cases from the various jurisdictions showing that all of these rights in respect to real property belong to the Petitioners residing in the several jurisdictions. The opinion of the Michigan State Supreme Court in *Sipes* v. *McGee* details some of these. Indeed, the appeal courts, whose decisions are now on review, have gone so far as to establish an unconstitutional doctrine violative of the principle of decision in the case of *Buchanan* v. *Warley, supra;* and have congealed the unconstitutional acts of judicial enforcement into what is declared by the courts to be "a rule of property" thereby making a law establishing ghettos for American citizens and citizens living within their jurisdictions.

III.

The state courts and the United States Court of Appeals for the District of Columbia have declared, made and established laws providing for racial segregation and deprivation of liberty and property and unequal protection of the laws against the petitioners and others by establishing and asserting a rule of judicial enforcement of racial restrictive covenants as a rule of property in violation of the Fourteenth and Fifth Amendments to the Federal Constitution.

In the statement of the case contained in this Brief, it has been pointed out that the highest courts of the jurisdictions in which the Petitioners reside, and in which the rights of the Petitioners have been determined, the courts uniformly base their decisions upon "settled law", "a rule of property" and judicial precedents of the several jurisdictions. While the decisions purport to con-

sider due process of law provisions of the Federal Constitution and of the constitutions of the several states, the approach used in the consideration of controversies in litigation is the application of general rules of law said to obtain in the respective jurisdictions without consideration of the rights of Petitioners as individual litigants in the courts. Rights, privileges, and immunities in Anglo-American law inhere in individuals, and normally, procedures adopted in dealing with legal controversies provide that the courts shall consider the rights of the litigants in the particular premises brought before the tribunals. What the appeal courts in all of these cases have said is in effect as follows:

> "The plaintiffs are property owners. They have the right to contract in respect to their property. They have a right to use the courts for enforcement of their contracts. Restrictions on the use of property are as a matter of common law enforceable by specific performance. The practice of this Court is to enforce restrictions on occupancy and ownership on the basis of race or color. The plaintiffs are of such a class and *ipso facto* are entitled to the normal remedy against the defendants as members of a class."

Such an attitude clearly ignores and violates the individual rights of Petitioners to acquire, own, enjoy and sell real property; to seek protection of the courts in the enjoyment of these rights; to have the benefit of the common law; to enjoy the equal protection of the laws; to be free from the imposition of "judge made law" violative of public policy as set forth in state statutes and as established by common law; to exercise the right of litigation on an individual basis; and to have — above all else — the guaranties afforded by the federal constitution and by legislation enacted by Congress.

This court has on several occasions had presented to it the question we have discussed here. In *Mitchell* v. *United States,* 313 U. S. 80, the court had before it a case involving the right of a passenger to the enjoyment of facilities in a common carrier engaged in interstate commerce. In a complaint filed with the Interstate Commerce Commission it was alleged that the plaintiff had been denied equality of treatment while traveling from the City of Chicago to Hot Springs, Arkansas. This court declared that an argument that predicated a fundamental constitutional right on the volume of traffic of a racial group was untenable in the application of the Fourteenth Amendment. The constitutional right of citizens could not, in the opinion of this court, depend upon the number of persons who may be discriminated against since the essence of the right is personal. This court went on to say: "While the supply of particular facilities may be conditioned upon there being a reasonable demand therefor, if facilities are provided, substantial equality of treatment of persons traveling under like conditions cannot be refused. It is the individual, who is entitled to the equal protection of the laws, — not merely a group of individuals, or a body of persons according to their numbers."

It should be noted that here the court's decision is in derogation of the separation statute of the State of Arkansas, a statute passed in the exercise of police power. In the instant cases, the invidious distinctions have no basis of classification under any legislative acts, but the classifications used by the court are as set forth by private individuals which the courts have accepted and enforced. The doctrine announced in *Mitchell* v. *United States, supra,* had been previously stated in well

considered decisions of this Court. See: *McCabe* v. *Atchison, Topeka, and Santa Fe Railroad*, 235 U. S. 141; *Missouri, ex rel Gaines* v. *Canada*, 205 U. S. 337.

In the Michigan decision under review, the Petitioner is given the benefit of the Michigan common law against unreasonable restraints on alienation, but is not given the benefit of the Michigan law which enforces a right of occupancy as a normal incident of the ownership of real property. The Michigan court refers to the public policy of that State recognizing the enforcement of restrictions against ownership and occupancy of property and cites authorities listed in 3 Callighan's Michigan Digest, 371-403. We have examined these cases and find that those dealing with the enforcement of restrictions that prohibit the use of real property for certain purposes are limited to physical uses having a regard for the safety, health, security and welfare of the community. So far as restrictions on the kind of people who exercise civil property rights are concerned, we find no history in Michigan court decisions except those of the type of the instant cases. In this regard we respectfully submit that the court has created a common law basis for the enforcement of restrictions as to the kind of persons who may enjoy property rights. This wrongful application of the common law of the State of Michigan by the Michigan Supreme Court constitutes a clear denial to the Petitioners in that case of the equal protection of the laws of Michigan. The Michigan Supreme Court alludes to the contractual rights of the plaintiffs as valuable property rights. The court ignores the right of the Petitioners to contract for, to acquire, own, enjoy, and dispose of real property which the Michigan Court decision under guise of enforcement of a contract takes away from the Petitioners. It is the basic right to contract that has sanctity,

not the contract itself. The court ignores that under Michigan law, in the cases cited by the court, judicial enforcement of contracts is not an absolute right, and that contracts will not be enforced when it is opposed to public policy of the state. Arbitrarily, the court denied the Petitioners the protection of the public policy of the State of Michigan against racial discrimination. The court failed to give the Petitioners the benefit of the declared policy announced by the Court, in *Mendlebaum* v. *McDonald*, 29 Mich. 78, of protecting the Petitioners in their right of property, including therein the right to occupy the real estate purchased by them, *Buchanan* v. *Warley, supra; Holden* v. *Hardy, supra;* and *Terrace* v. *Thompson, supra.* The Michigan Supreme Court applied against the Petitioners, when they asserted the right to have properly determined that they were members of the class restricted against, a decision of the Michigan Supreme Court, *People* v. *Dean*, 14 Mich. 406, 423, interpreting an election statute in the year 1866 before the passage of the Fourteenth Amendment abolishing racial and class distinctions in law, and accepted mere opinion of the plaintiff as a basis of determination.

The effects of the decisions from the other jurisdictions are the same in their failure to consider the individual rights of the Petitioners, and they apply an arbitrary doctrine of *stare decisis* in a manner to accomplish spoliation of the Petitioners' civil rights, in violation of the provisions of the Fourteenth and Fifth Amendments to the Constitution of the United States.

In considering the rights of the Petitioners, it should be observed that their secured right to acquire, own, enjoy, and dispose of realty is taken away from them by the device of enforcement of a private agreement to which they were not parties, and to which they could not have been

parties without surrendering this basic right, or by doing that which constitutionally they cannot do, or will not be permitted to do. It is, likewise, not in the power of any citizens or persons or contracting parties to deprive them of such right; nor is it in the power of the state courts to take away such basic right. This is a paramount civil property right which the courts in these cases have destroyed. State enforcement of contracts impinging upon this basic and paramount civil property right would in effect enable persons with the aid of the state to destroy the paramount civil rights of all. The ultimate result of this logic is to produce a condition of anarchy in which the rights of no man will be secure, and in which government through its own agency would destroy itself. Can the courts enforce contracts impinging upon and destroying this sacred right without violating that sound public policy which protects the security of the government and its citizens? It is obvious that a state by its public policy whether exhibited through its constitution, its statutes, or its judicial action, cannot destroy such rights in its citizens without violating the constitutional safeguards provided in the Fourteenth Amendment to the Federal Constitution. Such public policy of any state is a public policy prohibited by the Fourteenth Amendment to the Federal Constitution, the Federal Civil Rights Acts, and the decision of this court in *Buchanan* v. *Warley, supra.*

CONCLUSION.

In this Brief *Amicus Curiae,* The National Bar Association does not presume, or attempt to assume, the responsibility of counsel for the litigants in the cases accepted by this Court for review. We cannot, however,

refrain from exercising our responsibility of urging on this Court the gravity of the issues to be decided by the court. Social data of the highest significance have been presented to the court. These social data reflect the gravity of the effects of judicial enforcement of race restrictions by the courts in the several states in producing disunity, in hindering progress, and in destroying the happiness and welfare of our citizens. It must necessarily be remembered that the issues of human freedom demand a settlement that is based on justice and that the objectives of our constitutional democracy will inevitably be obtained.

In his dissenting opinion in *Plessy v. Ferguson,* 163 U. S. 537, Mr. Justice Harlan declared that:

> "In respect of civil rights, common to all citizens, the Constitution does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights."

He further observed, as follows:

> "I am of the opinion that the statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the letter and the spirit of the Constitution of the United States. If laws of like character should be enacted in the several States of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law, would, it is true, have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens, now constituting a part of the political community called the People of the United States, for whom, and by whom through representatives, our government is administered."

We respectfully urge, therefore, that this Court consider the guaranties of our Constitution and of our legal system as belonging to the individual without consideration of his race, his color, or his religion.

Respectfully submitted,

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